



## THE COMMONWEALTH OF MASSACHUSETTS

WATER RESOURCES COMMISSION  
100 CAMBRIDGE STREET, BOSTON MA 02114

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### **Meeting Minutes for November 4, 2004**

#### **Members in Attendance:**

Karl Honkonen	Designee, EOE A
Marilyn Contreas	Designee, DHCD
Cynthia Giles	Designee, DEP
Gerard Kennedy	Designee, DAR
Mark Tisa	Designee, DFG
Mike Gildesgame	Designee, DCR
David Rich	Public Member

#### **Others in Attendance:**

Linda Marler	DCR
Michele Drury	DCR
Sara Cohen	DCR
Ron Sharpin	DCR
Steve Garabedian	USGS
Vandana Rao	EOEA
Ralph Child	Mintz Levin
Glenn Pratt	Cohasset Water Commission
Tom Keeffe	Tutela Engineering Associates, Inc.
Richard Baummer	Erickson Retirement Community
Kellie O'Keefe	DEP NERO
Meredith Norton	MWRA
Emile Hamway	Fay, Spofford & Thorndike
Robert Kovacs	MWRA

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#### **Agenda Item #1: Executive Director's Report**

Marler provided an update on the hydrologic conditions:

- It is early in the month, so all of October's precipitation data are not yet available, but so far indications are that October rainfall was quite a bit below normal: 2.3 inches, statewide. However, because September was such a wet month, this is not yet a problem.
- Ground water levels are above normal in most of the state, and normal in all other areas.
- Surface water runoff: most of the state had normal streamflow levels. The month started with high levels of streamflow, due to the rain events in September. Things declined in October, because there were very few rain events.

- Reservoir levels are normal or a little bit above normal for this time of year, because of the rainfall in September.
- Fire danger is low, also due to the September rainfall.
- Drought indices are low, as well.
- There are still equal chances for above, below or normal winter weather (temperature and precipitation). Marler will be attending a weather conference this weekend and will hear more predictions. Snow is forecast for this weekend, especially in the western part of state and at elevations above 1,000 feet.

Honkonen gave the Executive Director's Report:

- The Water Policy Task Force is finalizing the recommendations. There will be an announcement of the policy on Tuesday, November 9<sup>th</sup> at Gillette Stadium in Foxborough, and it is open to all. Gillette Stadium was chosen as the venue because it is conveniently located and it is a great example of water reuse. The stadium treats its graywater and reuses it for toilet flushing, etc. This is a good example of one of the recommendations of the policy – encouraging water reuse.
- Last month, the WRC met prior to the formal meeting to discuss the recommendations of the Water Policy Task Force. There are 11 recommendations. The WRC analyzed these and developed a work plan and priorities. Honkonen thanked Cohen for taking notes. He then distributed the notes.
- Drury gave a brief update on the Reading Interbasin Transfer application status. Reading had some concerns with the June Staff Recommendation on its Interbasin Transfer application. Staff have spent a good part of the summer discussing this with the Town, which is concerned that some of the requirements may not be in their best interest. Drury reminded the Commission that it is important to remember that this is a voluntary project. Reading is not required to limit use of its wells and purchase MWRA water during the summer months. The town has come back with a slightly different proposal than what was presented in the ITA application, but which had been originally proposed in the Draft EIR. The new proposal is to only buy water and restrict the use of its own sources from May through September, rather than May through October.

The reason this application is not up for a vote today is because Staff wanted to reassess the data for this shorter period and the data was not received in time to finish the review for this meeting. Also, Staff wanted to inform the WRC of this change and provide a revised Staff Recommendation in a timely manner, in case there were any questions before the vote. Reading was therefore asked for an extension until the December meeting. Drury said that the revised Staff Recommendation would be included in the regular mailing for the December WRC meeting. It is currently undergoing internal review. Staff has conducted a preliminary analysis of the revised data and it does not represent a significant change to the donor basin and a very slight difference to the receiving basin, which is really beyond the jurisdiction of the ITA; but, because it is the Ipswich River basin it is certainly of interest to the WRC.

One of the conditions of the June Staff Recommendation was that Reading complete the retrofit of public buildings. The Town was undertaking this at the time of the application and was required by the conditions of the June Staff Recommendation to notify the WRC when these retrofits were completed. Most of the building retrofits have been completed. Drury

distributed the documentation provided by Reading. The remaining buildings to be retrofit are the High School, which is being renovated and scheduled for completion in 2007, and an elementary school, which is also being renovated and should be completed by next September. This condition will either be eliminated or modified in the December document.

- Honkonen provided the 2005 WRC meeting schedule. The meetings will continue to be held at 100 Cambridge Street.
- Tisa asked about the status of the public members. Honkonen said that the appointments had been submitted to the Governor's appointment offices. Public members haven't been formally appointed, but they can continue to serve in the interim. Honkonen added that there was still a vacancy for the ground water industry seat.
- Kennedy asked about the WRC recommendation on the water policy task force implementation. Honkonen said that Staff was continuing to work with the agencies, etc to assure that these tasks will be implemented.

**Agenda Item #2: Vote – Cohasset's Request for a Determination of Insignificance under the Interbasin Transfer Act**

Drury acknowledged the representatives from Cohasset and Erickson. She reminded the WRC that this had been discussed last month. The Cohasset water supply system is located in the South Coastal basin. The Erickson Retirement Community is in Hingham, in the Weymouth/Weir subbasin of the Boston Harbor basin. Cohasset will be supplying water for the future phases of this development. Phase 1 will be served by the Aquarion Water Company, in Hingham, but Aquarion does not have the capacity to supply their long term needs. Erickson is requesting 0.3 mgd from Cohasset at full build out. Wastewater from the development will be discharged through an on-site ground water disposal system.

Marler stated that this application hinges on the operating plan for the reservoir system in Cohasset. The Cohasset water supply system consists of the Aaron River Reservoir, Lily Pond, Herring Brook and Bound Brook. There are fish ladders on both of these impoundments, but they haven't been well used in the past. Under this proposal, Cohasset will maintain seasonal flows recommended by the Division of Marine Fisheries during the times of year when fish are using the system. There will also be a fish monitoring program and a flow monitoring program to assure that the flows are present when the anadromous fish runs are occurring and the fish are capable of using these flows. This proposal will replace the older 1 cfs release requirement, which is inadequate for instream flow needs and hasn't really been implemented. This is also coupled with a drought management plan in Cohasset, which includes outdoor water use restrictions. Staff thought that this is an improvement to the existing situation. It is an engineered system, and a water supply system, so it will never behave like a natural system, but this will provide reasonable seasonal flows, which will allow the migratory fish to move through the system. Marler added that Cohasset would need to obtain a Water Management Act permit, which will incorporate these elements as conditions.

<b>V</b>	Gildesgame moved with a second by Giles that Cohasset's request to serve the Erickson
<b>O</b>	Linden Pond development be deemed insignificant under the Interbasin Transfer Act, as
<b>T</b>	outlined in the Staff Recommendation of November 4, 2004.
<b>E</b>	The vote in favor was unanimous of those present.

**Agenda Item #3: Vote – To Accept the MWRA’s Cummingsville Relief Sewer Interbasin Transfer Application as Complete**

Drury acknowledged the staff from the MWRA and their consultants. She said that this was the first time this project had come before the WRC. It is only the second time that an application was found to be complete without a formal request for additional information. The first occurred several years ago. The proponent was the MWRA and they were using the same consultant.

The Cummingsville project has been ongoing for several years, and the Secretary’s certificate on the project was issued in November 1994. The project went through MEPA before their regulations changed to require an EIR for all significant interbasin transfers. An EIR was not required for this project, but an extensive facilities plan was developed, which was provided to staff as part of the IBT application.

The Cummingsville sewer serves Burlington, Woburn and part of Winchester. There have been Administrative Consent Orders (ACOs) between DEP and Burlington and Woburn which require controlled overflows into Horn Pond in Woburn and Vine Brook in Burlington during storm events. The existing Cummingsville sewer, which intercepts flow from these community sewers, is undersized. These overflows do not occur on a regular basis, but only during peak wet weather flows, and the MWRA is proposing to enlarge the Cummingsville sewer to accommodate these events. WRC Staff and the other environmental agencies have reviewed the information provided and feel all required information has been furnished. Therefore, the WRC is being asked to accept the application as complete. This means that the technical review can begin and the required public hearings can be held. If the application is accepted as complete, the window of opportunity to hold public hearings is from December 15<sup>th</sup> through January 3<sup>rd</sup>. Staff is trying to schedule public hearings for sometime in mid-December. If all goes according to schedule, a Staff Recommendation will be presented at the January WRC meeting.

<b>V</b>	Honkonen moved with a second by Contreas that the WRC accept the Cummingsville IBT
<b>O</b>	application as complete.
<b>T</b>	
<b>E</b>	The vote in favor was unanimous of those present.

**Agenda Item #4: Discussion - Changes to the Revised Water Management Act Regulations since the Last Presentation**

Giles asked that the vote on the changes, which was originally scheduled for today, be postponed because the Water Management Act program had just received comments from the DEP Office of General Counsel (OGC) with suggestions on how to improve the language. The decision was made to first take these changes to the WMA Advisory Committee. DEP is asking that today the WRC discuss the changes suggested by OGC and postpone the vote until next month. In the meantime, these suggestions will be presented to the Advisory Committee.

The overall purpose of the changes is to take out the regulatory definition of safe yield and substitute the statutory definition. The reason is that there has been almost universal agreement that the regulatory definition does not provide an appropriate method for determining safe yield. In the interest of good government and clarity, it was felt that this should be taken out of the regulations and replaced with the statutory definition, which governs the definition anyway. DEP has put out a policy which clarifies what a proponent can expect from DEP when they

apply for a WMA permit, depending on whether they are in a high, medium or low stress basin. One of the things raised by the WRC and the Advisory Committee, was that an explanation of why the regulation change was being done be included. That is why a preamble has been added. The preamble is not a regulation, but it is an explanation which will accompany the regulations. This is the first part of the most recent changes.

There is one other purpose for the regulatory change and that is to give DEP the authority to request information to determine if a project is subject to the Act, and if permittees are complying with their permits. There has been ambiguity regarding this authority, and this change gives DEP a clear vehicle to collect this information.

The document presented shows changes to changes. The shaded areas in the document distributed today show the most recent changes. Giles went over the changes. The heart of the matter is deletion of the safe yield methodology. The entire methodology was originally proposed to be deleted, but during the public comment period it was pointed out that some of the sections proposed for deletion contained regulations about the authority DEP has to condition permits, so these are now retained.

A new safe yield methodology is not defined in this revision. Many studies are now under way, including the streamflow task force and USGS studies, so rather than selecting among the many approaches that were suggested through the public comment period, it was decided to list the factors that would be considered in determining safe yield.

A vote will be requested next month, and then the regulations will go through the formal regulatory change process outlined by the Secretary of State's office. Rich asked if this had been sent to the Massachusetts Water Works Association. Giles replied that this latest version had been finalized yesterday and this was its first public airing. It will be sent to MAWWA. Rich asked what would happen in the period between deleting the current safe yield definition and adopting the new one. Giles stated that the old regulations will be in effect until the new regulations are passed. In fact, the statutory definition is in effect today. The statutory definition is always the controlling factor. Garabedian added that the statutory definition remains, but it is the methodology that will change. Giles said that is right.

#### **Agenda Item #5: Presentation – New Web Site: Environmental Progress Report**

Giles said that between the conception of this website and development has been about a year and a half. The environmental progress report used to be the environmental goals project. The purpose is to make sure that DEP is doing the most important work that needs to be done for environmental protection. This is a way to hold the agency accountable to the public. It is also meant to build external support for changing some of the being work done now in the regulatory arena. The usual way to deal with environmental problems is to pass a statute, once a problem is identified, then write regulations and impose requirements through permits, which the Department then monitors for compliance and takes enforcement when violations are discovered. The current process measures success through making sure DEP follows the process correctly and assures that the right number of things are done on time and the right way.. Sometimes in pursuit of this goal we lose sight of the true goals of protecting public and environmental health. The focus on getting items through the process becomes paramount. Looking at results is a

better measure of if the goals of the statute are being achieved. Under the traditional way of measuring the success of a program, some elements contributing to a problem get “defined out” of the process. For example, with the water pollution control statutes, point sources were regulated, but non-point sources, which weren’t included in the regulatory definitions, were not. But these elements still contributed to the problem. Another problem was that having a permit program only catches those entities that are permitted. If an entity does not apply for a permit, it will likely not be regulated because budgets for outreach and enforcement of non-permitted entities are not usually included in these programs. The net result is that the permitted universe bears most of the burden even if they are only a part of the problem.

The Environmental Progress Report is based on the premise of getting back to first principles: is the water clean; is the drinking water safe? These are fundamental questions to be answered. Refocusing our work toward these outcomes can have a huge impact on what work is done. For example, instream flow: Many people blame low flows on permitted water withdrawals. But permitted withdrawals are only a small portion of the problem. If the flow to Deer Island is examined, a very large proportion of the flow comes from inflow and infiltration. More than 50% of water treated at Deer Island is not sanitary wastewater and cannot be addressed through regulation of withdrawers. So withdrawals are only one cause of the low flow problem, and permitted withdrawals are only about 15% of the total withdrawals. Focusing primarily on permitted withdrawals will not resolve the in stream flow problems.

Unfortunately there are a lot of barriers to this approach:

- Sometimes the process is the main work i.e. the regulatory agencies are required to issue permits in a timely manner, conduct inspections etc. This takes a large portion of staff time, and with budget cuts, getting this work done is a challenge. This makes it difficult to look at the larger picture. In the wetlands program, currently 50% of staff time is spent on permitting and appeals. Monitoring, outreach and policy development take a lot of the remainder, leaving only about 9% of the time to do enforcement. Even for the enforcement we used to do, very little was targeted at preventing the most significant illegal activity and was instead primarily reactive – in response to complaints or violations we happened to notice or hear about.
- Another barrier is the fact that the monitoring and environmental data units of the Department are separate from the permitting/compliance monitoring and enforcement staff. Consequently even the data we do have on environmental condition and the causes of problems is not always used to direct our work.
- EPA also adds to the process.
- Data is not available.
- Everyone is locked into the existing system. It is easier to count how many permits are issued. It is less easy to quantify if water quality has been improved.

Results should be the work. Translate the outcomes into steps to get to the goal. Put available data on the web. This helps to get outside input into the process. Get results into the public arena. Take the criticism and make improvements. This will help drive innovation.

Gildesgame asked about the regulated community’s perspective on the change. Giles said there will not be an overnight change. But they will see the data which will outline the contributors to the problem. Gildesgame followed up and asked, once this program is up and running, how will

it affect the regulated community? Giles said it will be obvious that the regulated community is just one part of the totality of the issues that need to be dealt with. Gildesgame asked if certain permitting processes would be changed. Giles answered yes, permitting processes will not be eliminated, but this could mean moving to more self-certification, etc. This will free up staff to focus on the other problems. The regulatory model is good for some problems, but not for other. It will not get us to smart growth. Government has to be more creative.

Honkonen said that this is a revolutionary perspective. How does it get vetted to the greater Commonwealth and how will success be measured in the short term? Giles said in DEP's annual plan, the environmental conditions to be improved will be identified. At the end of the year, compliance, rather than enforcement, will be discussed. The best way to vet this is to get it out to the public.

Kennedy said that DAR has found that EPA is more interested in enforcement actions as a measure of success and asked what kind of dialog DEP has had with EPA. Giles said that EPA Region 1 is very interested in this program. They are willing to try this approach, but EPA headquarters is interested in "counting beans". So DEP will try to link the outcomes to EPA's "beans". The EPA Deputy Regional Director has suggested bringing this to Washington to discuss with headquarters.

Cohen asked if this change will happen by shifting staff activities. Giles answered yes, but as we get more creative and realize the complexity of these problems, more collaboration with outside partners will be needed. It will require more strategic thinking.

Garabedian said that the issue of measuring outcomes speaks to the need for long-term monitoring. Giles said yes, a lot more monitoring will be needed. The holes in the data are enormous. Investments in monitoring should be made.

Rich was enthusiastic about the program and suggested that it should be presented to MAWWA. This will help us achieve the environmental goals of the Commonwealth.

Meeting adjourned

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Meeting minutes approved 2/24/05